

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

DAVID W. NANCE &
PRISCILLA LYNN NANCE,

Plaintiffs,

V.

UNITED STATES OF AMERICA

Defendant.

Civil No. 1:12-cv-01064

UNITED STATES' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Local Civil Rule 12.1, the United States hereby moves this Court for an order dismissing plaintiffs' amended complaint for failure to state a claim upon which relief can be granted. In support of its Motion, the United States avers as follows.

Plaintiffs seek the refund of a penalty in the amount of \$156,478.00 for the tax period ending December 31, 2003, which was assessed against them under 26 U.S.C. § 6677(b) for failure to timely file their 2003 Form 3520-A (Annual Informational Return of Foreign Trust With a U.S. Owner). Plaintiffs allege that they are entitled to the requested refund, because: (1) the 2003 tax year was included in an agreement between plaintiffs and the Internal Revenue Service, in which the Service agreed to limit the application of certain penalties; and (2) plaintiffs had reasonable cause for late-filing their 2003 Form 3520-A because they reasonably relied on the Service's representations.

Neither of these claims have merit because: (1) the 2003 tax year was never part of any agreement between plaintiffs and the Service; and (2) plaintiffs' failure to timely file the 2003 Form 3520-A necessarily precludes plaintiffs from establishing they had reasonable cause for late filing their 2003 Form 3520-A.

The grounds for this motion are set forth more fully in the United States' brief in support of its motion to dismiss filed contemporaneously with this motion.

Date: October 25, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT has been made on October 25, 2012 by ECF filing and served thereby on interested parties registered with the system, and by placing a true and correct copy of the document in the United States mail, postage prepaid, addressed as follows:

Frank N. Stockdale Carney
L. Clayton Culpepper
Evans/Petree PC
1000 Ridgeway Loop Rd., Suite 200
Memphis, TN 38120

/s/ Christopher J. Williamson
CHRISTOPHER J. WILLIAMSON